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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* DOUGLAS McCAUSLAND, DAVID HORNER, and  
JONATHAN L. DISCOUNT

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Appeal 2011-005252  
Application 11/479,715  
Technology Center 2400

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Before DENISE M. POTHIER, DAVID M. KOHUT,  
and DAVID C. McKONE, *Administrative Patent Judges*.

McKONE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1-23, which constitute all the claims pending in this application. *See* App. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

### THE INVENTION

Appellants' invention relates to processing and delivery of digital media. *See* Spec. ¶ 0004. Claim 23, which is illustrative of the invention, reads as follows:

23. A method comprising:
- transmitting a digital asset to only one of a plurality of devices configured to support instant communications, wherein the digital asset includes a video stream;
  - sharing the digital asset by the one of a plurality of devices with at least one other of the plurality of devices; and
  - providing a portal for users of the devices to manage respective instant communications accounts.

### THE REJECTIONS

Claims 1-3, 5-12, 14-20, 22, and 23 stand rejected under 35 U.S.C. § 102(e) as anticipated by DeWeese (US 2005/0262542 A1; published Nov. 24, 2005; filed July 16, 1999). *See* Ans. 4-10.

Claims 4 and 13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over DeWeese and Zigmond (US 6,698,020 B1; issued Feb. 24, 2004; filed June 15, 1998). *See* Ans. 10-11.

Claim 21 stands rejected under 35 U.S.C. § 103(a) as unpatentable over DeWeese and Graham (US 6,732,183 B1; issued May 4, 2004; filed May 4, 2000). *See* Ans. 11-12.

## ANALYSIS

REJECTION OF CLAIMS 1-3, 5-12, 14-20, 22, AND 23 UNDER 35 U.S.C. § 102(e)

*Claims 1, 2, 5, 7, 8, 10, 11, 14, 16, 17, 19, 20, 22, and 23*

DeWeese describes a chat system that operates in an interactive television program guide system, for example a cable or satellite television program guide system. *See* DeWeese ¶¶ 0012, 0051-53. According to DeWeese, a television distribution facility can include a chat server that facilitates real-time chat communications among users. *See* DeWeese ¶ 0057, Fig. 1A. The real-time communications can be distributed to users' set-top boxes along with the interactive program guide and displayed as part of the guide. *See* DeWeese ¶ 0060. The users, then, can engage in real-time chat sessions while watching television. *See* DeWeese ¶ 0070, Figs. 13, 16. The chat messages can include mixed media, such as text, audio, video, and HTML. *See* DeWeese ¶ 0091. For example, a user's set-top box can be equipped with a video camera for taking pictures of the user, who can send those pictures to other members of the chat group, who in turn can view the pictures along with the chat messages and television programs. *See* DeWeese ¶¶ 0109-110, 0119; Figs. 12, 16.

Regarding representative claim 23, the Examiner finds that the video camera capturing video and sending it to a chat-equipped set-top box, as shown in Figure 12, is transmitting a digital asset (including a video stream) to only one of a plurality of devices configured to support instant communications. *See* Ans. 9-10, 18-19. The Examiner further finds that sending the video images to other chat participants is sharing the digital asset by the one device with at least one other of the plurality of devices. *See* Ans. 17.

Appellants contend that a user's image is not a "digital asset" (as recited in independent claims 1, 10, and 23) or "digital media" (as recited in independent claim 19). App. Br. 9. However, Appellants have not persuasively shown why the terms "digital asset" and "digital media" should be interpreted as excluding video images take with a user's video camera. The Specification does not define "digital asset" or "digital media" and does not describe either restrictively. For example, the Specification states that "the digital media can be any type of media that the user considers to be assets." Spec. ¶ 0054. Similarly, the Specification explains that "[f]olders can store any asset type configured by administrators, from audio and video to ring-tones, images and documents," (Spec. ¶ 0065), suggesting that assets and media can be of various types, explicitly including video. *See also* Ans. 17.

In the Reply Brief, at page 6, Appellants argue that Wikipedia defines "digital asset" as:

[a]ny form of content and/or media that have been formatted into a binary source which include the right to use it. A digital file without the right to use it is not an asset. Digital assets are categorised in three major groups which may be defined as textual content (digital assets), images (media assets) and multimedia (media assets).

Appellants then argue that a user's image acquired by the set-top box video camera "is merely used to give a pictorial indication to a chat room participant of the other participants, but there is no right to use the user's image." Reply Br. 6. We are not persuaded. Appellants have not established that Wikipedia is a reliable source of a definition of "digital asset" or persuasively explained why the Wikipedia definition should override the Specification's broad description. Moreover, Appellants cite no

support for their argument that DeWeese's chat recipients are restricted from using video images received from other participants.

Appellants argue that, even if DeWeese's video image is a digital asset, it is immediately shared with other devices and thus is not first sent to only one device and then shared by that device with other devices. *See* App. Br. 9-10; Reply Br. 7. In response, the Examiner explains that the video images may be received by the user's set-top box (one of a plurality of devices) and then transmitted to the chat equipment associated with the other chat participants (at least one other of the plurality of devices). *See* Ans. 18-19. We agree with the Examiner. Appellants have not persuasively explained why "transmitting a digital asset to only one of a plurality of devices" requires transmission from one of the plurality of devices to another of the plurality of devices. As broadly recited, claim 23 does not exclude DeWeese's transmission of video images from a camera to a set-top box.

Appellants also argue that DeWeese's program guide is not a digital asset (App. Br. 7-8), and that there is no facilitating of sharing because each user already has access to the program guide (*id.* at 9-10). However, the Examiner clarified that television programs or channels accessed through the program guide, rather than the program guide itself, are cited as digital assets. *See* Ans. 13. Appellants then argue that a television program is not a digital asset because it is the program guide, not the television program, that is being transmitted and shared. *See* Reply Br. 2-3. For the reasons given above, Appellants have not persuasively shown that the construction of "digital asset" or "digital media" should be limited to exclude television programs or, for that matter, television program guides. Moreover, it is not

necessary to decide whether a television program is “shared,” because, as explained above, the Examiner alternatively, and correctly, finds that the video camera attached to the set-top box of DeWeese transmits a digital asset to only one of a plurality of devices, which then shares the digital asset with others of the plurality of devices.

Appellants further contend that DeWeese does not disclose “providing a portal for users of the devices to manage respective instant communications accounts,” as recited in claim 23. *See App. Br. 11.*

Appellants argue that DeWeese’s description in paragraphs 0091 and 0093 describe the ability to enter a uniform resource locator (“URL”) for a web page in a chat message but that the webpage referenced by the URL, while it may be a portal to something, is not a portal for users to manage instant message accounts. *See App. Br. 12.* Appellants also argue that paragraph 0088 of DeWeese describes selection of an identity or identities from a list of individuals interested in a particular program, but does not disclose management of instant communications accounts. *See id.*

The Examiner responds that the cited portions of DeWeese show that each user, in order to chat, signs in through his or her own web page, which the Examiner finds sufficient to show a portal for managing an instant messaging account. *See Ans. 20.* The Examiner argues that the Specification does not clearly explain how instant communications accounts are managed. *See id.* In their summary of claim 23, Appellants point to Specification paragraphs 0064-65 and Figure 3 (manage portal function 303c) as the disclosure supporting this claim limitation. *See App. Br. 6.* Indeed, the manage portal function 303c is simply described as “permitting users to interface with the [virtual digital asset manager] 301 . . . .” Spec. ¶

0064. In reply, Appellants argue that “[m]anagement requires some interaction or manipulation with data in the account” (Reply Br. 8), but they cite to no support for this construction. In light of the Specification, a “portal for users of the devices to manage respective instant communications accounts” is reasonably construed as broad enough to encompass a log in webpage for a chat user.

Moreover, even if managing an instant messaging account were to require “some interaction or manipulation with data in the account,” DeWeese discloses such manipulation in paragraph 0075, which discloses that a user may enter, using a display screen, profile data that will form that user’s identity in the chat system. Entering such information is managing an instant communications account even under Appellants’ construction. Accordingly, we are not persuaded that the Examiner erred in finding that DeWeese anticipates claim 23.

Appellants advance substantially the same arguments for independent claims 1, 10, and 19, which essentially are broader versions of claim 23. For example, where claim 23 recites “transmitting a digital asset to *only one of a* plurality of devices,” claim 1 recites “transmitting a digital asset to *one of a* plurality of devices;”<sup>1</sup> where claim 23 recites “wherein the digital asset includes a video stream,” claim 1 includes no such limitation; and where

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<sup>1</sup> Appellants argue that “one of” in claims 1 and 10 should be construed to mean “only one of,” as in claim 23, and that the facilitating sharing limitations should be construed to be performed by that particular one device following the transmitting limitations. *See* Reply Br. 4. Appellants point to no persuasive evidence for limiting claims 1 and 10 to be narrower than their ordinary meaning. In any case, even if claims 1 and 10 are narrowly construed to be commensurate in scope with claim 23, they are anticipated for the reasons given above for claim 23.



claim 23 recites “sharing the digital asset *by the one of a plurality of devices* with at least one other of the plurality of devices,” claim 1 more broadly recites “facilitating sharing of the digital asset among the devices” without requiring any specific device to do the sharing. Appellants’ arguments as to claims 1, 10, and 19 are unpersuasive for the same reasons as claim 23.

Accordingly, we sustain the rejection of independent claims 1, 10, 19, and 23, as well as claims 2, 5, 7, 8, 11, 14, 16, 17, 20, and 22, each of which depends on one of claims 1, 10, and 19, and is not argued separately with particularity.

#### *Claims 3 and 12*

Regarding claim 3, Appellants argue that DeWeese’s chat request is not an invitation to receive a digital asset because it is not an invitation to receive a television program guide. *See App. Br. 13.* Appellants also argue that a chat is not a digital asset. *See App. Br. 14.* The arguments are not persuasive. As explained above, the Examiner also finds that DeWeese discloses receiving images from a video camera attached to a set-top box, and that such video images are also digital assets.

Regarding such video images, Appellants argue that DeWeese discloses no invitation to receive video images. *See App. Br. 14.* We disagree. As the Examiner finds, paragraph 0088 of DeWeese shows an invitation to join a chat. *See Ans. 5.* DeWeese’s paragraph 0109 discloses that a video camera can capture video and paragraph 0110 explains that this captured video can be transmitted to other chat participants. Taken together, these portions of DeWeese describe inviting other devices to a chat in which

they will receive the video (i.e., the digital asset). Thus, DeWeese discloses inviting the other devices to receive the digital asset.

Accordingly we sustain the rejection of claim 3 and claim 12, which is not argued separately with particularity.

*Claims 6 and 15*

Claim 6 recites that the digital asset “is specified by a playlist that is created by one of the devices . . . .” The Examiner finds this disclosed in paragraphs 0075 and 0076 of DeWeese, which describe a household user entering his or own favorite programs into his or her profile, and paragraph 0082, which describes a household user entering favorite programs into a non-household user’s profile. *See* Ans. 6-7. According to DeWeese, the household user may chat with the non-household user, for example to ask the non-household user to identify the favorite programs. DeWeese ¶ 0082. The Examiner interprets “playlist” broadly enough to include “favorite program” and “transmitted to another one of the devices” to include sending chat requests to the non-household user. Ans. 21.

Appellants argue that a “favorite program” cannot be a playlist because a playlist would require a plurality of programs. Reply Br. 9. Appellants also argue that a favorite program is not transmitted to other parties. *See id.* We agree with Appellants. The Examiner has not shown how an identification of a single program can be a list. If the Examiner is identifying the collection of the household user’s or non-household user’s favorite programs as a playlist, the Examiner has not shown that DeWeese discloses transmitting such lists to other devices.

Thus, we agree that the Examiner erred in finding that DeWeese anticipates claim 6 and, therefore, we do not sustain the rejection of claim 6 or claim 15, which includes a commensurate limitation.

*Claims 9 and 18*

Claim 9 depends on claim 1 and recites “transmitting a plurality of digital assets to one of the devices, the one device being configured to display the digital assets concurrently.” Appellants argue that the video images captured by the video camera connected to the set-top box of DeWeese’s Figure 12 are not displayed concurrently. *See App. Br. 17.* The Examiner responds that the user’s television equipment is configured to receive and display multiple different digital assets concurrently, not just one video from the video camera. *See Ans. 7-8 (citing DeWeese ¶¶ 0059, 0118).*

We agree with the Examiner. For example, Figure 16 illustrates concurrently displaying a news program 315 and a video from a chat 318, both examples of digital assets, as explained above. *See also DeWeese ¶ 0119.* Similarly, Figure 11 illustrates concurrently displaying multiple video chat images from different chat participants. *See also DeWeese ¶ 0107.* Accordingly, we sustain the rejection of claim 9 and claim 18, which is not argued separately with particularity.

REMAINING OBVIOUSNESS REJECTIONS

Claim 4 depends on claim 1; claim 13 depends on claim 10; and claim 21 depends on claim 19. Appellants do not separately argue these claims with particularity. *See App. Br. 18-19.* Accordingly, we sustain the

rejections of claims 4, 13, and 21 for the reasons given for claims 1, 10, and 19.

ORDER

The Examiner's decision to reject claims 1-3, 5, 7-12, 14, 16-20, 22, and 23 under 35 U.S.C. § 102(e) is affirmed.

The Examiner's decision to reject claims 6 and 15 under 35 U.S.C. § 102(e) is reversed.

The Examiner's decision to reject claims 4, 13, and 21 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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